

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES FOR THE
LABORERS HEALTH & WELFARE
TRUST FUND FOR NORTHERN
CALIFORNIA, et al.,

Plaintiffs,

v.

P & J UTILITY COMPANY,
Defendant.

Case No. [21-cv-01075-DMR](#)

**ORDER TO SUBMIT
SUPPLEMENTAL BRIEFING IN
SUPPORT OF MOTION FOR
DEFAULT JUDGMENT**

Re: Dkt. No. 46

On November 2, 2022, Plaintiffs Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California, et. al., moved pursuant to Federal Rule of Civil Procedure 55(b)(2) for default judgment against Defendant P&J Utility Company, a California corporation (“P&J”). [Docket No. 46 (“Mot.”).] The court held a hearing on December 8, 2022, at which Plaintiffs were ordered to provide additional evidence demonstrating the adequacy of service on P&J and establishing the recommended interest rate and liquidated damages amounts. [Docket No. 48.] Plaintiffs timely responded on February 10, 2023. [Docket No. 49 (“Supp. Briefing”).] Having reviewed Plaintiffs’ supplemental briefing, the court determines that Plaintiffs have not established that service has been effectuated.

Plaintiffs’ service efforts are set forth in full in the court’s order denying Plaintiffs’ renewed motion for service by publication. [Docket No. 36.] In short, after several unsuccessful service efforts, Plaintiffs filed a first motion for service by publication on March 8, 2022, which the court denied without prejudice. [Docket Nos. 21-1, 26.]

On June 7, 2022, Plaintiffs filed a renewed motion for service by publication. [Docket No. 31-1.] The court again denied Plaintiffs’ motion without prejudice, in part because Plaintiffs’

“own investigation turned up possible leads with other individuals connected to Defendant, including relatives of G. and D. Miller and other corporate officers [that Plaintiffs had not] pursued.” [Docket No. 36 at 9.] In relevant part, Plaintiffs’ process server had attempted service on D. Miller—P&J’s agent for service of process—at an address identified with him in Sausalito, California. [Docket No. 46-1, (Schechter Decl., Nov. 1, 2022) ¶ 6.] According to the process server’s notes, on March 4, 2021 a woman at the Sausalito address reported that D. Miller had passed away three years prior and that she thought D. Miller’s son Chris ran the business and was located in Southern California, but she did not know his address. *Id.*, Ex. C. On April 1, 2021, Plaintiffs’ counsel received mail containing a certified death certificate for D. Miller confirming that he died on December 13, 2018. *Id.* ¶ 10, Ex. D. The informant’s name on the certificate was “Chris Miller, son” and his address was listed as “2445 Lucca Avenue, Los Olivos, CA 93441.” *Id.* Along with the death certificate was a copy of the summons on which the word “DECEASED” was printed without any other note. *Id.* On August 21, 2022, Plaintiffs then served Christopher Miller at 2445 Lucca Avenue, Los Olivos, California. [Docket No. 37.] A copy of each document was also sent to him via first-class mail. *Id.*

Plaintiffs now maintain that they properly served P&J through substitute service on Christopher Miller. Supp. Brief at 1, 4. Unfortunately, their supplemental briefing is confusing. For example, Plaintiffs rely on California Code of Civil Procedure § 415.20(b), which governs substitute service on an individual, not a corporation. *See* Supp. Brief at 3. P&J is a corporation, not an individual. They also cite cases that are readily distinguishable, as discussed below. Plaintiffs offer evidence that conceivably could demonstrate effective service, but they fail to articulate a coherent, legally supported theory.

Federal Rule of Civil Procedure 4(h)(1) authorizes service upon a domestic corporation “in the manner prescribed by Rule 4(e)(1) for serving an individual,” which, in turn, allows for service “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.” Fed. R. Civ. P. 4(e)(1). Pursuant to Rule 4(h)(1), service of a corporation can be effectuated by following state law for serving a summons in the state where the district court is located.

1 Under California Code of Civil Procedure § 416.10, a corporation may be personally
2 served by delivering a copy of the summons and complaint to “the person designated as agent for
3 service of process” or “the president, chief executive officer, or other head of the corporation, a
4 vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or
5 chief financial officer, a general manager, or a person authorized by the corporation to receive
6 service of process.” Cal. Civ. Proc. Code §§ 416.10(a), (b).

7 California law also allows service of a corporation to be effectuated through substitute
8 service. “In lieu of personal delivery” to the person to be served as specified in California Code of
9 Civil Procedure § 416.10, a copy of the summons and complaint can be served by substitute
10 service when delivered “during usual office hours [to] his or her office, or if no physical address is
11 known, at his or her usual mailing address with the person who is apparently in charge.” Cal. Civ.
12 Proc. Code § 415.20(a). A copy of the summons and complaint must also be mailed to the same
13 address thereafter. *Id.*

14 In support of their contention that substitute service was proper, Plaintiffs submit evidence
15 of Christopher Miller’s purported connection to P&J. The following facts are taken from the
16 supplemental declaration submitted by Plaintiffs’ counsel. [*See* Docket No. 49-1 (Schechter Supp.
17 Decl.).] On September 28, 2022, Plaintiffs’ counsel received an envelope bearing the return
18 address of “P&J, 41 Dorman Ave Ste 1, San Francisco, CA 94124.” Schechter Supp. Decl. ¶ 6,
19 Ex. 1. The envelope contained a copy of the first page of the summons issued against P&J on
20 February 21, 2021 and a copy of Daniel Miller’s death certificate. *Id.*, Ex. 2. On October 4, 2022,
21 Plaintiffs’ counsel received another envelope from P&J’s registered business address on Dorman
22 Avenue in San Francisco. *Id.* ¶ 7, Ex. 3. The envelope contained a copy of the status report
23 served on Christopher Miller, and a handwritten note stating: “Daniel Miller is deceased Dec.
24 2018. I have no affiliation or knowledge of P&J Utility Company. As far as I know it no longer
25 exists. Please cease and desist from sending me any further legal communication regarding this
26 matter. Regards, Chris Miller.” *Id.*, Ex. 4.

27 Plaintiffs also submit evidence that on at least two occasions between January 1, 2013 and
28 December 31, 2018, which is the period over which Plaintiffs conducted an audit of Defendants’

1 contributions to the union benefit funds, Christopher Miller signed fringe benefit contribution
 2 remittance reports and checks on behalf of P&J. [Docket No. 49-3 (Lauziere Supp. Decl.) ¶¶ 3, 4,
 3 Exs. A, B.] Specifically, on January 8, 2019, the Laborers Funds Administrative Office of
 4 Northern California (LFAO) received a Combined Employer Report of Contributions from P&J
 5 reporting the hours worked by its employees during the month of November 2018. The report was
 6 signed by Christopher Miller as “POA Dan Miller.” Lauziere Supp. Decl. ¶ 3, Ex. A. The
 7 signature endorsing the check remitted by P&J for its contributions for the month of November
 8 2018 also appears to be the same as Christopher Miller’s signature on the report. Lauziere Supp.
 9 Decl. ¶ 3, Ex. A. On January 23, 2019, the LFAO received a Combined Employer Report of
 10 Contributions from P&J for the month of December 2018. This report was signed by Christopher
 11 Miller as “Trustee for Dan Miller.” Lauziere Supp. Decl. ¶ 4, Ex. B.

12 Plaintiffs argue that Christopher Miller “had a close relationship to P&J, as evidenced by
 13 the fact that he signed checks and submitted signed remittance reports to the Plaintiffs on P&J’s
 14 behalf.” Supp. Briefing at 4. They call attention to the fact that in the context of substitute
 15 service, “[s]ervice must be made upon a person whose ‘relationship with the person to be served
 16 makes it more likely than not that they will deliver process to the named party.’” Supp. Brief at 3-
 17 4 (quoting *Bein v. Brechtel-Jochim Grp., Inc.*, 6 Cal. App. 4th 1387, 1393 (1992) (quoting 50
 18 *Court St. Assoc. v. Mendelson et al.*, 572 N.Y.S.2d 997, 999 (1991))).

19 *Bein* is not pertinent here because it analyzes whether a defendant corporation’s president
 20 was properly served through his gate guard. Plaintiffs do not spell out why they believe *Bein*
 21 governs the present situation. For example, is Christopher Miller analogous to the corporate
 22 president in *Bein*? If so, what facts support that conclusion? Or is Christopher Miller the analog
 23 to the gate guard? If so, who is the analog to the corporate president, and what is Christopher
 24 Miller’s relationship to that person? Plaintiffs ignore, elide, and conflate these important aspects
 25 of the analysis.

26 Stated another way, Plaintiffs have not explained or established who is permitted to receive
 27 personal service of process on P&J’s behalf pursuant to California Code of Civil Procedure §
 28 416.10. Are Plaintiffs arguing that Christopher Miller is so permitted? If that is the case, then

1 Plaintiffs have not explained how he meets the requirements of section 416.10 as being “the
 2 person designated as agent for service of process” or “the president, chief executive officer, or
 3 other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or
 4 assistant treasurer, a controller or chief financial officer, a general manager, or a person authorized
 5 by the corporation to receive service of process.” Cal. Civ. Proc. Code §§ 416.10(a), (b). If
 6 Christopher Miller does not meet those requirements, then Plaintiffs need to identify who does,
 7 and then explain how service on Christopher Miller constituted substitute service on P&J pursuant
 8 to the requirements of California Code of Civil Procedure § 415.20(a). Perhaps Plaintiffs are
 9 trying to make a different argument altogether; if so, they haven’t sufficiently explained it.
 10 Whatever their theory may be, bottom line, Plaintiffs need to spell it out and support it instead of
 11 leaving the court to guess at it.

12 In addition, Plaintiffs argue that “there is evidence that the Summons and Complaint were
 13 received by P&J.” Supp. Brief at 4. In support, Plaintiffs point to the fact that 1) P&J sent a copy
 14 of Daniel Miller’s death certificate to Plaintiffs’ counsel from its registered business address in
 15 San Francisco, and 2) Christopher Miller sent mail addressed to Plaintiffs’ counsel using an
 16 envelope bearing P&J’s address as the return address. Plaintiffs rely on a string of cases to
 17 conclude that “[t]hese mailings demonstrate that it is more likely than not that Christopher Miller
 18 delivered the Summons and Complaint to P&J—or that a person closely affiliated with P&J or
 19 acting on its behalf (here, Christopher Miller) actually received the Summons and Complaint—
 20 and that P&J was thus notified of the Trust Funds’ Complaint.” Supp. Briefing at 4-5.

21 Plaintiffs’ cited cases are distinguishable. Two of the three cases involve substitute service
 22 on an individual defendant instead of a corporation. *See Ellard v. Conway*, 94 Cal. App. 4th 540
 23 (2001) (analyzing whether substitute service of individual defendants was proper under section
 24 415.20(b)); *Berdux v. Project Time & Cost, Inc.*, 669 F. Supp. 2d 1094 (N.D. Cal. 2009) (same).
 25 The third case analyzes service on an individual authorized to receive service on behalf of a
 26 corporate defendant, namely the designated agent for service of process. *See Cromwell v.*
 27 *Certified Forensic Loan Auditors*, No. 17-CV-02429-DMR, 2019 WL 1095837, at *9-10 (N.D.
 28 Cal. Jan. 10, 2019), *report and recommendation adopted*, No. C 17-02429 SBA, 2019 WL

2181969 (N.D. Cal. Feb. 12, 2019).

In sum, Plaintiffs have not adequately explained and supported their position on service. **By May 31, 2023**, Plaintiffs shall submit additional briefing and evidence to address these deficiencies or, in the alternative, to present a new theory establishing that P&J was properly served with the summons and complaint. Plaintiffs must make clear arguments that (1) describe the type of service effectuated and point to the relevant service statute; (2) set forth the elements for each type of service they assert has been effectuated, and (3) identify the evidence in support of each of these elements.

Immediately upon receipt of this order, Plaintiffs shall serve P&J with a copy of this order and file a proof of service with the court.

IT IS SO ORDERED.

Dated: May 5, 2023


Donna M. Ryu
Chief Magistrate Judge